

Remarks

The office action of April 23, 2003 has been reviewed and the examiners comments carefully considered. The examiners comments will be addressed in turn.

Regarding the drawings, the specification has been amended to eliminate reference numbers not shown in the drawings. There is believed to be no objection to the drawing remaining in view of the amendment to the specification.

The specification has been amended to clarify the informalities cited by the examiner regarding page 6.

The examiner suggests that claims 1-8 as originally filed are confusing as to the scope of the claims regarding whether a combination or sub-combination is claimed. The claims are believed to accurately define the claimed invention. For clarification, note that claims 1-7, and 13-20 are directed toward a CONTAINER CLOSURE as set forth in the preamble of the claim. The three elements of the claimed closure is (1) a shell, (2) a tip and (3) a cover. Neither the container nor the container opening is positively recited in these claims as an element of the claimed invention. Certainly the shell is defined as being operable to be attached to a container around a container opening thereof, however the claims do not suggest that this is a claimed element. There is no suggestion in the claims that the closure itself, or the shell, the tip or the cover includes the container or the container opening (as a further note, subsequent references to the container and container opening utilize "the" instead of "said" to further highlight that these elements are not positively recited). Claims 8-12 are directed toward a dust cover rather than the entire closure. The metes and bounds of the claims is believed to be accurate and reconsideration of this rejection is respectfully requested.

Regarding the lack of antecedent basis for "said cover" in claim 8, please note that the preamble clearly recites the cover. It is well established that the preamble is part of the claims. Reconsideration of this rejection is requested.

All of the claims have been rejected in view of the combined teachings of the earlier Yurkewicz patent taken in view of the Boissay patent. The examiner's rejection is respectfully traversed for the following reasons.

The examiner acknowledges that the Yurkewicz patent does not teach or suggest the ribs of the present claimed invention. We agree with this portion of the examiner's conclusions.

The examiner attempts to rely on the Boissay patent to teach "a container closure comprising a cover 16 having internal and radially extending ribs 56 engagable with a tip 32 when the cover [16] is attached to the shell 28." This is not a fair reading of the Boissay patent.

The claimed invention (and the Yurkewicz patent) is directed toward a push pull type container closure having a shell, tip and cover. The shell has a body attachable to a container around a container opening thereof with the shell having a shell opening in fluid communication with the container opening when said shell is attached to the container. Further the shell includes a central stem wherein the shell opening is an annular opening surrounding the stem. The tip is received on the shell movable between an open position and a closed position sealing the shell opening. The cover has a cover attaching member for releasably attaching the cover to the shell.

In contrast the Boissay patent is not directed toward and does not define a push pull type closure. The container closure of the Boissay patent has an end piece 14 (of which element 32 is a part) attached to the container or bottle 10. The end piece 14 act as the "shell" since it has a body attachable to the container around the container opening thereof with the end piece having a opening (central bore) in fluid communication with the container opening when the end piece is attached to the container. Figure 5 and the description of the invention best illustrate these aspects. The end piece 14 cannot be considered a tip within the meaning of the present claimed invention since it does not seal any shell opening and cannot be moved from an open position to a closed sealing position as set forth in the claims. Further it is the cap 16 that is acting as the closure for sealing the container through seal 58, therefore it is the cap 16 that is analogous to the tip of the

present claimed invention which is received on the shell movable between an open position and a closed position sealing the shell opening.

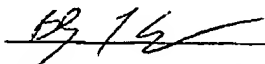
The use of ribs 56 on the sealing member that seals against the structure coupled to the container opening is what the Boissey patent fairly teaches. This teaches away from the present claimed structure. There is clearly no teaching or suggestion of taking these ribs from a non-analogous structure of a non-analogous closure and placing them on the dust cover of the Yurkowicz patent. The sole rational for such a combination stems from the applicants own disclosure.

In conclusion, (1) the Boissay patent is non-analogous art to the present claimed invention. There is no reason why one of ordinary skill in the closure art seeking to improve the push pull closure of the Yurkowicz patent would look to the non-analogous dispensing bottle of the Boissay patent. Further (2) neither the Yurkowisc or the Boissay patents fairly teach or suggest a dust cover with tip engaging centering ribs of the present invention (the Boissey patent has ribs on the sealing cap member – the “tip”). Additionally, the Boissey patent teaches away from the present claimed invention by teaching the sealing of the cover/cap 16 on the “shell” (e.g. modifying the tip of the Yurkowisc patent to cover the shell, or modify the cover to seal against the shell – either way it is not the claimed invention). Finally (3) the examiner’s suggested modification sifts through the maze of prior art elements selectively picking and choosing structure with no rational basis to do so other than the applicants own disclosure.

New claims 9-20 have been added to further clarify and distinguish the present claimed invention from the prior art. Favorable action is respectfully considered.

Respectfully Submitted;

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